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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 355

TRINITYFARM CONSTRUCTION COMPANY,
APPELLANT,

vs.

ALICE LEE GROSJEAN, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA,
APPELLEE.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

STATEMENT OF JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, appellant submits herewith its statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above-entitled cause:

A.

Statutes.

The statutory jurisdiction of the Supreme Court to review by direct appeal the order or decree here complained of is conferred by Section 266 of the Judicial Code, Act

March 3, 1911, c. 231, as amended by Act March 4, 1913, c. 160, and Act February 13, 1925, c. 229, and by Section 238 of the Judicial Code as amended by Act February 13, 1925, c. 229.

B.

Louisiana Statutes Validity of Which is Questioned.

The statutes of the State of Louisiana the validity of which are questioned are Act No. 6 of the Legislature of Louisiana for the year 1928, as amended by Act No. 8 for the year 1930, as amended by Act No. 16 for the year 1932, and Act No. 1 of the Extra Session of the Legislature of Louisiana for the year 1930.

Act No. 6 of 1928 is to be found on page 14 *et seq.* of the Acts of Louisiana for the Extra Session of 1928; Act 8 of 1930 is to be found on page 17 *et seq.* of the Acts of Louisiana for the year 1930; Act 16 of 1932 is to be found on page 112 *et seq.* of the Acts of Louisiana for the year 1932.

Act No. 6 of 1928, as amended, is an act to provide revenues for the public highways of the State of Louisiana by levying a tax of four cents per gallon on all gasoline or motor fuel sold, used or consumed in the State of Louisiana for domestic consumption; it provides that such tax shall be collectible from all persons, firms, corporations or associations of persons, engaged as dealers in the handling, sale or distribution of such gasoline within the State of Louisiana; it defines as "dealers" any person, firm, corporation or association of persons, who produces, refines, manufactures, blends or compounds gasoline or motor fuel for sale to the jobber or consumer, or to the persons, firms, corporations, or associations of persons who, in turn, sell to the jobber or consumer; it further defines as "dealers" any person, firm, corporation or asso-

ciation of persons who imports gasoline from any other State or foreign country for distribution, sale, or use in the State of Louisiana, and declares that the importer, so defined as a "dealer," shall pay the tax on the amount of gasoline so imported and used, the same as if it had been sold for domestic consumption; it provides for methods of collection, fines and penalties, and, in certain cases, confiscation of gasoline and other property as well as imprisonment for those violating the provisions of the act. It provides that the tax shall not apply to sales to the United States Government or any agency or department thereof. The title, the material portion of Section 1 and all of Section 2 of Act No. 6, as amended, read as follows:

"AN ACT

"To amend and reenact Section 1 of Act No. 6 of 1928, approved December 18, 1928, as amended by Act No. 8 of 1930, entitled 'An Act to provide revenues for the public highways of the State of Louisiana by levying a tax of four cents per gallon on all gasoline or motor fuel sold, used or consumed in the State of Louisiana for domestic consumption, as authorized by paragraph (A) Section 22, Article VI, of the Constitution of Louisiana, of 1921, as amended, defining motor fuel, fixing the time of collecting such tax and providing for the expense thereof, prescribing the manner and methods of enforcing payment, and fixing penalties for failure to make same, requiring all those engaged in the handling, selling, or distribution of gasoline or motor fuel to make such report of their business as may be necessary for the proper enforcement of this Act, providing that all said taxes collected under the provisions of this Act shall be credited to the General Highway Fund and expended for the purpose of the construction and maintenance of the system of State Highways and bridges, and for such other purposes as provided for

in paragraph (*a*), Section 22 of Article VI, of the said Constitution of Louisiana, and repealing all laws or parts of laws in conflict therewith,'' and adding seven new sections to be designated Section 7-A, Section 7-B, Section 7-C, Section 7-D, Section 7-E, Section 7-F, and Section 7-G, providing penalties for the enforcement thereof, and repealing all laws in conflict therewith.'

''SECTION 1. *Be it enacted by the Legislature of Louisiana,* That there is hereby levied a tax of four cents (4¢) per gallon on all gasoline, or motor fuel, sold, used or consumed in the State of Louisiana for domestic consumption, to be collected as hereinafter set forth * * *.''

''SECTION 2. The aforesaid tax of four cents per gallon shall be collectible from al persons, firms, corporations or associations of persons, engaged as dealers in the handling, sale or distribution of such products within the State of Louisiana, the method of collection to be as prescribed in Section 4 of this Act. The term 'dealer' as used in this Act is defined to mean any person, firm, corporation or associations of persons, who produces, refines, manufactures, blends or compounds gasoline or motor fuel for sale to the jobber or consumer, or to the persons, firms, corporations, or associations of persons who, in turn, sell to the jobber or consumer. The term 'dealer' is further defined to mean the person, firm, corporation or association of persons who import such gasoline or motor fuel from any other State or foreign country for distribution, sale or use in the State of Louisiana. On all gasoline or motor fuel imported from other States and used by him, the 'dealer' as thus defined shall pay the tax on the amount so imported and used, the same as if it has been sold for domestic consumption.''

Act No. 1 of the Extra Session of the Legislature of Louisiana for the year 1930, in so far as the issues presented by this case are concerned, is identical to the act

above described, except that it was a joint resolution of the Legislature intended to and has become an amendment to the Constitution of the State of Louisiana, and except that it imposes a tax of one cent per gallon and dedicates the revenue to a specific fund for the payment of bonds. It is to be found on page 5 of the Act of Louisiana for the Extra Session of 1930.

C.

Date of Decree and Application for Appeal.

The final decree sought to be reviewed was entered June 15, 1933 (R. 68). The petition for appeal was presented to aforesaid district court, with this statement, on July 14, 1933, and the order allowing appeal was entered July 14, 1933.

D.

Nature of the Case.

This cause was instituted by a bill in equity filed by Trinityfarm Construction Company seeking to enjoin Alice Lee Grosjean, Supervisor of Public Accounts, the official charged with the collection of taxes imposed by the acts above referred to, from collecting or attempting to collect the said tax on gasoline imported by Trinityfarm Construction Company into Louisiana from other States, in which other States the gasoline had been purchased by Trinityfarm Construction Company, for exclusive use in the construction of levees on the main stem of the Mississippi River, within the State of Louisiana, under contracts between plaintiff and the United States of America, and to further enjoin the said official from interfering with plaintiff in the performance of such contracts by suits, seizures, fines, imprisonment or otherwise. The specially constituted district court of three judges granted a temporary

restraining order without hearing; subsequently, after hearing, granted a preliminary injunction; subsequently, upon the case being set for trial on the merits, decided the case in favor of plaintiff and made the injunction final, but, thereafter requested a reargument of the case and, finally, on the 15th day of June, recalled the prelminary injunction issued herein and dismissed plaintiff's bill of complaint, holding the tax to be due and the statutes complained of to be constitutional.

E.

Cases Sustained Jurisdiction.

The following decisions are believed to sustain the jurisdiction of this Court:

Clark v. *Poor,* 274 U. S. 554, 47 S. Ct. 702, 71 L. Ed. 1199;

Interstate Busses Corporation v. *Blodgett,* 270 U. S. 245, 48 S. Ct. 230, 72 L. Ed. 551;

Herkness v. *Irion,* 278 U. S. 92, 49 S. Ct. 40, 73 L. Ed. 198.

Respectfully submitted,

(Sgd.) D. K. Woodward, Jr.,
Breazeale & Sachse,
H. Payne Breazeale &
Victor A. Sachse,
Attorneys for Appellant.